

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

REZULIN PRODUCTS LIABILITY
LITIGATION (MDL No. 1348)

MASTER FILE

00 Civ. 2843

This Document Relates to: All Cases

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AMENDED
PRETRIAL ORDER NO. 2
(Pretrial Schedule)

LEWIS A. KAPLAN, *District Judge*.

1 Conduct of discovery on behalf of plaintiffs

All discovery directed against defendants and non-party witnesses on behalf of plaintiffs shall be undertaken by or under the direction of Plaintiffs' Executive Committee ("PEC") on behalf of all plaintiffs with cases in this MDL as well as on behalf of all plaintiffs in state court cases that are coordinated with this MDL or as to which there is an agreement or order to utilize discovery generated herein.

2 Discovery

2.1 Completion date

Unless otherwise ordered, all discovery in these consolidated cases shall be completed on or before January 31, 2002. Although the Court will consider any application for an extension, the parties should assume that no extension will be granted.

2.2 Defendants' document production

2.2.1 Warner-Lambert has represented to the Court that it has been collecting and placing relevant documents in a depository, which documents will be made available also in the form of electronic images on CD-ROM, that most of the roughly 3.5 million documents collected from originally targeted custodians will be in the depository by January 2, 2001, and that the detail force documents gathered in its Roanoke warehouse will be made available by February 1, 2001. To the extent, if any, that it has not done so previously, Warner-Lambert shall make these documents available to plaintiffs on a rolling basis.

2.2.2 The PEC may serve a Rule 34 request on defendants on or before November 17, 2000.

2.2.3 All documents requested by the PEC on or before November 17, 2000, and all documents that Warner-Lambert has represented it will produce (*see* ¶ 2.2.1) shall be placed in its depository no later than February 1, 2001.

2.2.4 Warner-Lambert shall provide logs of materials withheld from any document production on privilege, work product or other grounds no later than 45 days after the groups of documents from which the materials were withheld are placed in the depository.

2.2.5 Subject to compliance with the confidentiality order entered this date, the PEC, at its own expense, may establish and regulate access to its own depository containing copies or images of documents produced by Warner-Lambert.

2.3 Plaintiffs' depositions of defendants

2.3.1 Plaintiffs may commence Rule 30(b)(6) depositions relating to the organization of Warner-Lambert and the identification of potential deposition witnesses immediately.

2.3.2 Subject to paragraph 2.3.3 hereof, plaintiffs may commence non-party fact depositions of witnesses believed to have testimony relevant to Warner-Lambert's conduct immediately.

2.3.3 The PEC and defendants promptly shall confer and attempt to agree upon a comprehensive deposition schedule providing for the completion of fact depositions of defendants' present and former employees and agents, and any other persons under defendants' control, by September 30, 2001. Any such schedule shall comply with paragraph 2.1 hereof. If the parties fail to agree upon such a schedule, they shall so report to the Court no later than February 1, 2001, including in their report the reasons for their inability to agree and the extent of any partial agreement.

2.3.4 Plaintiffs' Liaison Counsel ("PLC") shall give at least two weeks' notice of each deposition scheduled in this case that is expected to deal with material common to other Rezulin cases to counsel of record in and judges presiding over Rezulin cases pending in state courts.

2.4 Interrogatories

2.4.1 Interrogatories shall be served by the PEC on defendants only if the information sought cannot practically be obtained by a review of documents or through depositions. The limitation on the number of interrogatories provided in the third sentence of Fed. R. Civ. P. 33(a) shall not apply.

2.4.2 The PEC immediately may serve initial interrogatories pursuant to S.D.N.Y. Civ. R. 33.3 relating to the identity of witnesses and the location of documents.

2.4.3 The PEC may serve additional interrogatories until August 2, 2001. Within fifteen days after service of such interrogatories, counsel shall meet and confer to resolve any objections defendants may have thereto. Insofar as objections are not interposed, or if revised interrogatories are agreed upon, the defendants shall answer the interrogatories within the time provided by Rule 33 or within twenty days after such conference, whichever is longer, unless the parties otherwise agree or the Court otherwise orders.

2.4.4 Contention interrogatories may not be served absent leave of Court.

2.5 Fact discovery against plaintiffs

2.5.1 Fact discovery against plaintiffs shall take place concurrently with the PEC's discovery against defendants.

2.5.2 Plaintiffs with claims of personal injury

2.5.2.1 Defendants have provided the PEC with a proposed plaintiff questionnaire, including requests for medical, employment and insurance authorizations and other pertinent documents, to be completed under oath by all plaintiffs. The parties shall agree upon the content of such a questionnaire and the form of authorizations by November 17, 2000, failing which they shall submit their respective positions to the Court by November 21, 2000 for determination. The sworn responses to the questionnaire shall be treated as interrogatory answers. To the extent that any documents or

responses are withheld on the grounds of privilege, plaintiffs shall provide a privilege log.

2.5.2.2 By January 2, 2001 or forty days after a questionnaire is approved by the Court, whichever is later, completed sworn questionnaires with the required documents and duly executed authorizations shall be served on defendants' counsel by each plaintiff in each case included in this MDL that was docketed in this Court on or before the date of this order. Plaintiffs in MDL 1348 cases subsequently docketed in this Court shall be served such materials no later than forty days after the date of such docketing or the date required for cases docketed prior to the date of this order, whichever is later.

2.5.2.3 In the event a plaintiff fails to serve a timely and sufficient response to the questionnaire, including all necessary documents and authorizations, defendants may send a warning letter to the plaintiff's counsel of record (with a copy to the PLC) identifying the deficiencies in that plaintiff's response and warning that the failure to provide all of the required information within thirty days of the date of the letter may result in the dismissal of that plaintiff's action. Any such letter shall be sent by certified mail, return receipt requested.

2.5.2.4 Following receipt of a response to the questionnaire, defendants may seek additional discovery with respect to the claim of the responding plaintiff from that plaintiff and from non-party witnesses by means provided in the Federal Rules of Civil Procedure.

2.5.2.5 In exigent circumstances, the parties may agree and, absent agreement, any party may apply for leave to conduct an expedited deposition to preserve testimony. The service of any such motion by a plaintiff shall follow or be accompanied by a completed questionnaire and all required authorizations and copies of all medical, employment and/or insurance records in the possession of the moving plaintiff or that may be obtained by that plaintiff through reasonable efforts.

2.5.3 Class action and other plaintiffs

2.5.3.1 The PEC and defendants' counsel will propose to the Court procedures for discovery against plaintiffs who assert class action or other claims, in lieu of or in addition to claims of existing or potential personal injury, on or before December 15, 2000.

3 Class actions

- 3.1** The PEC shall file a consolidated amended class action complaint no later than December 15, 2000.
- 3.2** Defendants may commence discovery of class representatives on January 16, 2001. The PEC shall use its best efforts to expedite completion and service of questionnaires and authorizations by class representatives.
- 3.3** The PEC shall serve plaintiffs' motion for class certification and supporting papers on or before January 16, 2001.
- 3.4** The parties shall meet and confer about a schedule for class related discovery and

briefing and report to the Court no later than January 31, 2001.

4 Experts

- 4.1** The PEC shall provide expert disclosures pursuant to Rule 26 no later than October 30, 2001, whereupon defendants may commence depositions of plaintiffs' experts..
- 4.2** Defendants shall provide their expert disclosures within thirty days after receiving PEC's disclosures, whereupon the PEC may commence depositions of defendants' experts.
- 4.3** All expert discovery shall be completed on or before January 31, 2002.
- 4.4** The parties shall attempt to agree and shall confer with the Court concerning scheduling of motions relating to the admissibility of expert testimony, including the scheduling of motions in limine, *Daubert* submissions and evidentiary hearings, after the expert depositions are completed and on or before December 15, 2001.

5 Dispositive and Summary Judgment Motions

Because the parties may not be in a position to make all potential summary judgement motions until after the last decision by this Court with respect to the admissibility of any expert testimony, the last day for summary judgment motions, given the discovery that needs to be completed, shall be on January 31, 2002 or the thirtieth day after the last decision by this Court with respect to the admissibility of any expert testimony.

6 Final report regarding pretrial proceedings to be completed prior to remand.

On or before January 31, 2002, the parties shall meet, confer and report to the Court concerning any other pretrial proceedings, including dispositive motions and/or motions in limine, or any discovery, that remains to be completed in any of the then pending cases, so that this Court can determine whether each is ready for trial and remand to its respective transferor court.

SO ORDERED.

Dated: December 13, 2000

Lewis A. Kaplan
United States District Judge